The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte DAVID H. HAYNES

Appeal 2007-1406
Application 09/910,970
Technology Center 2600

Decided: September 6, 2007

Before LEE E. BARRETT, MAHSHID D. SAADAT, and ST. JOHN COURTENAY III, *Administrative Patent Judges.*

COURTENAY, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-35.[1] We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

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[1] Appellant has withdrawn claim 21 from consideration in this appeal (Br. 2). Therefore, the appeal is dismissed as to claim 21. Appellant cancelled

THE INVENTION

The disclosed invention relates in general to video processing systems and, more specifically, to a system and method for detecting the border of recorded video data (Specification 1).

Independent claim 1 is illustrative:

1. A method for detecting the border of recorded video data, comprising:

analyzing a plurality of video frames, the plurality of video frames comprising recorded data content and unrecorded data content; and

identifying at least one frame of the unrecorded data content as a border of the recorded data content.

THE REFERENCES

Nafeh	US 5,343,251	Aug 30, 1994
Dettmer	US 5,812,732	Sep. 22, 1998

THE REJECTIONS

Claims 1-7, 9-13, 15-19, 22-29, and 31-35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dettmer.

Claims 8, 14, 20, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Dettmer in view of Nafeh.

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claims 36-40 in the After Final Amendment (received April 30, 2004) which the Examiner entered on appeal (*see* Advisory Action mailed May 11, 2004). Therefore, the appeal of claims 1-20 and 22-35 is before us.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Briefs and the Answer for the respective details thereof.

STATEMENT OF LAW

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005) (citation omitted). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (citations omitted).

ANALYSIS

Independent claims 1, 9, 15, 23, and 29

We consider the Examiner's rejection of independent claims 1, 9, 15, 23, and 29 as being anticipated by Dettmer.

We begin by noting that Dettmer discloses a rule-based system that classifies television signals as representing commericials (Abstract). Dettmer's system provides for the elimination of those parts of the television

signals that correspond to commercials during recording or playback (Abstract, *see also* col. 1, ll. 6-10).

We find the issue of whether Dettmer discloses "unrecorded data content" to be dispositive with respect to all claims on appeal.

Regarding each of independent claims 1, 9, 15, 23, and 29, Appellant points out that the signals evaluated by Dettmer contain only *recorded data content* in the form of a *program* or a *commercial* (Br. 5-9). Thus, Appellant contends that Dettmer does not disclose, teach, or suggest identifying a border between *unrecorded data content* and recorded data content, as required by the language of each independent claim (*id.*).

The Examiner disagrees. The Examiner apparently reasons that since the desired program is recorded and the undesired/commercial program becomes unrecorded in Dettmer, the limitations of "recorded data content and unrecorded data content" are met (Answer 3). As such, the Examiner corresponds "undesired" data content to Dettmer's commercial data content (Answer 4). Thus, the Examiner concludes that Dettmer meets the limitations of having a border detection module which detects undesired and desired materials based on pixel values (*id.*).

In the Reply Brief, Appellant restates the argument that each frame of the Dettmer signal has *content,* i.e., either *program* data content or *commercial* data content (Reply Br. 2).

After carefully considering the evidence before us, we agree with Appellant's reasoning as set forth in the Briefs. We find each of independent claims 1, 9, 15, 23, and 29 expressly recites the limitation "unrecorded data content." We construe this term broadly but reasonably in a manner fully

consistent with the Specification and also in accordance with the plain meaning of the term "unrecorded." This plain meaning is fully supported in the Specification at page 3, lines 26-28, where unrecorded material is "usually displayed on a video output as a solid color or snow, which is a random-pattern black and white image."

While we agree with the Examiner that commercial data content may reasonably correspond to "undesired data," we nevertheless find Appellant's claims are silent regarding the desirability of the data. Instead, each of independent claims 1, 9, 15, 23, and 29 expressly recites the limitation of "unrecorded data content." We also find the Examiner has not shown or adequately explained how "unrecorded data content" can be fairly read on the commercial content disclosed by Dettmer. In that regard, Dettmer identifies the commercials before recording or copying which results in not recording the commercials and leaving only recorded data containing the main programming (col. 4, ll. 4-12). This is not the same as having at least one frame of the unrecorded data content as a border of the recorded data content. The frame arrangement of Dettmer, at best, may be characterized as *unrecordable* data frames bordering *recordable* data.

Because we find Dettmer fails to disclose the recited limitation of "unrecorded data content," we agree with Appellant that the Examiner has failed to set forth a prima facie case of anticipation. Therefore, we reverse the Examiner's rejection independent claims 1, 9, 15, 23, and 29 as being anticipated by Dettmer. Because we have reversed the Examiner's rejection of each independent claim on appeal, we will also reverse the Examiner's rejection of dependent claims 2-7, 10-13, 16-19, 22, 24-28, and 31-35, as

being anticipated by Dettmer. For the same reason, we reverse the Examiner's rejection of dependent claims 8, 14, 20, and 30 as being unpatentable over the teachings of Dettmer in view of Nafeh.

DECISION

In summary, we will not sustain the Examiner's rejection of any claims under appeal. Therefore, the decision of the Examiner rejecting claims 1-20 and 22-35 is reversed.

REVERSED

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